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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,191	10/26/2001	James R. Mault	MJA-22802/03	9028

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EXAMINER

BELLAMY, TAMIKO D

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/040,191

Applicant(s)

MAULT ET AL.

Examiner

Tamiko D. Bellamy

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-45 is/are allowed.
- 6) ☒ Claim(s) 22-28, and 30-33 is/are rejected.
- 7) ☒ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The amendment dated 4/3/03 has been received and entered. Claims 1-21 have been canceled. Claims 22-45 are currently pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 22, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bianco (4,855,942) in view of Allen et al. (5,749,372).

With respect to claims 22, 27, and 28, Bianco discloses in fig. 2 a case 31, a strap 32 placed around the wrist (col. 8, lines 23-25), a time button 33, and a lap/reset button 34 (col. 8, lines 30-32). The lap/reset button is equivalent to an activity entry means. Bianco lacks the detail of an activity level sensor, a processor that uses the activity level signal, and an external display communicating the activity level. Allen et al. discloses a device that monitors the current or instantaneous activity level (col. 2, lines 45-56). Allen et al. also discloses a computer interface 34, and a visual displays 18 and 19. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use Bianco to the teachings of Allen et al. to monitor activities of an user including an activity level sensor and processor as the system of Bianco would operated equally well on either tested system. Evidence of this can be found in Bianco which

discloses that crystal 17 provides an aural signal each time the subject takes a stride (col. 6, lines 57-59).

4. Claims 23-26, 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bianco (4,855,942) in view of Allen et al. (5,749,372) as applied to claim 22 above, and further in view of Mault (2002/0027164).

With respect to claim 23, the combination of Bianco and Allen et al. discloses that in order to read out stored signals indicative of the number of calories consumed, the button 35 is pressed (Bianco, col. 14, lines 58-65). The combination of Bianco and Allen et al. lacks the detail of a food consumption entry means. Mault discloses that the PDA (personal digital assistant) 40 and the activity sensor 45 may be combined (pg. 6, par. 71); and the PDA acts as an activity sensor when carried on a belt (pg. 6, par. 71). Furthermore, Mault discloses the imaging device 43 records images of foods consumed (pg. 6, par. 76). Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the combination of Bianco and Allen et al. according to the teachings of Mault to monitor activities of an user including an food consumption entry means as the system of Bianco would operated equally well on either tested system. Evidence of this can be found in the combination of Bianco and Allen et al. which discloses that in order to read out stored signals indicative of the number of calories consumed, the button 35 is pressed (Bianco, col. 14, lines 58-65).

With respect to claims 24-26, the combination of Bianco and Allen et al. discloses all of the claim except for a communication link. Mault discloses that signals from the activity sensor 45 may be transmitted over the communication network 48 (pg. 8, par.

95). Hence, the output signals from the activity sensor 45 are transmitted to the PDA (personal digital assistant) 40. Mault also discloses the communication network 48 could be a wireless network (pg. 6, par 74). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the combination of Bianco and Allen et al. according to the teachings of Mault to monitor activities of an user including communication link as the system of Bianco would operated equally well on either tested system. Evidence of this can be found in the combination of Bianco and Allen et al. which discloses activity level monitoring. Therefore, the computing device processes received signals from the users desired location.

With respect to claims 30 -32, the combination of Bianco and Allen et al. discloses all of the claim except for sensing a physiological parameter or use in determining a activity level of the user. Mault discloses that the PDA (personal digital assistant) 40 and the activity sensor 45 may be combined (pg. 6, par. 71); and the PDA acts as an activity sensor when carried on a belt (pg. 6, par. 71). The activity sensor is equivalent to a physiological sensor. With respect to the further limitations of claims 31 and 32, Mault disclose that other physiological data may be transmitted from the PDA (pg. 6, par. 74). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the combination of Bianco and Allen et al. according to the teachings of Mault to monitor activities of an user including a physiological sensor as the system of Bionco would operated equally well on either tested system. Evidence of this can be found in the combination of Bianco and Allen et al. that disclose an activity level monitoring. Therefore, the device using a combination of

Art Unit: 2856

activity level sensor and a physiological sensor determine the users desired level of activity.

With respect to claim 33, the combination of Bianco and Allen et al. discloses all of the claim except for capturing a digital image. Mault discloses capturing the image and recording it in memory (pg. 6, par. 77). Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the combination of Bianco and Allen et al. according to the teachings of Mault to monitor activities of an user including a capturing a digital image as the system of Bionco would operated equally well on either tested system. Evidence of this can be found in the combination of Bianco and Allen et al. which discloses that in order to read out stored signals indicative of the number of calories consumed (Bianco, col. 14, lines 58-65).

Allowable Subject Matter

5. Claim 29 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claims 34-45 are allowed

With respect to claim 34 and 41, the specific limitation as to correlating the resting metabolic rate with the activity metabolic rate to determine a metabolic rate correlation factor, and using the a metabolic rate correlation factor and a sensed activity level to determine an activity expenditure is not taught and/or made obvious by the prior art. Prior art makes use of a determining the number the number of calories consumed during an exercise. However, prior art

Art Unit: 2856

does not take into account of determining resting metabolic rate and activity metabolic rate in determining the activity caloric expenditure.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamiko D. Bellamy whose telephone number is (703) 305-4971. The examiner can normally be reached on Monday through Friday 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

Tamiko Bellamy

T.B.

May 23, 2003

HELEN KWOK
PRIMARY EXAMINER
Helen Kwok